

Access to water as a public service within the framework of Human Rights in Colombia

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Colombia: Social State of Law

Article 1. Colombian Constitution

Colombia is a social State of law organized in the form of a unitary republic, decentralized, with autonomy of its territorial units, democratic, participatory and pluralistic, based on respect of human dignity, on the work and solidarity of the individuals who belong to it, and the **predominance of the general interest.**

Essential goal of the State: To serve the community

Article 2. Colombian Constitution

The essential goals of the state are to serve the community, promote general prosperity, and guarantee the effectiveness of the principles, rights, and duties stipulated by the Constitution; (...).

The authorities of the Republic are established in order to protect all persons residing in Colombia, their life, dignity, prosperity, beliefs, and other rights and freedoms, and **in order to ensure the fulfillment of the social duties** of the state and individuals.

Public services – social ends

Article 365. Colombian Constitution

Public services are inherent to the social purpose of the state. It is the duty of the state to ensure their efficient provision to all the inhabitants of the national territory.

Public services will be subjected to the legal regime determined by the law, may be provided by the state directly or indirectly, by organized communities, or private persons. In any case, the state is responsible for the regulation, control, and application of such services.



Colombia: Welfare State?

Contradiction?

Social State of Law ↔ Strong trend towards Privatization

- Control?
- Guarantee?

Types of Public Services

- Social
- Commercial and industrial
- Residential or domiciliary

Concept of Domiciliary Public Utilities (DPU)

- «They are those that are provided through a system of physical or human network with endpoints in homes or workplaces of users and are specific orientated to satisfy the essential needs of the people».

(Constitutional Court, Decision T 578/92)

Characteristics of the DPU

- DPU are provided by the State directly or indirectly, by organized communities, or private persons
- They are subject to the regulation, control and supervision of the State
- The State has the **obligation to ensure** their efficient provision to all the inhabitants of the national territory

Characteristics of the DPU

- They are provided through a system of physical or human network
- They have as endpoints in homes or workplaces or users
- They are specific orientated to satisfy the essential needs of the people
- They are provided upon payment of a fee previously established
- The mechanism of socioeconomic stratification, based on principles of solidarity and equity, was established for the payment of these utilities (1 – 6 levels).

Basic DPU

Article 14 Law 142/1994

- Water and sewer (*Kanalisation / Alcantarillado*)
- Sanitation
- Electricity
- Gas
- Public telephony

Public utilities - numbers

- Population without acces to safe water 28%
- Population without acces to electricity 5%
- Population without acces to sewer 22.19%
- Population without acces to gas 18%

Water Utility Acces
*(Wasserleitung/
Acueducto)*



Human Right to Water

Is the Water Utility (public service) part of the human right to water, or it is a human right itself?

Is the water utility the only way to realize the right to water?

Right to Water in International Law

International context - no specific norm related to the right to water

but

This topic has a deep connection with other basic human rights. Committee of ESCR underlines especially, besides the Right to Life (Art. 6 CCPR):

- Art. 11 CESC
- Art. 12 CESC

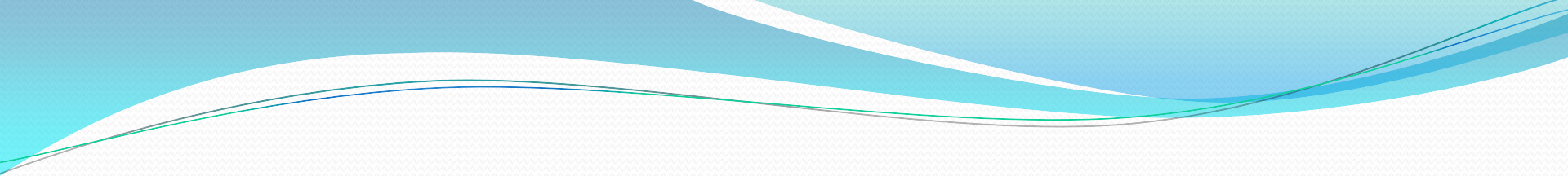
(UNO Committee on Economic, Social and Cultural Rights, General Comment No. 15)

Article 11 CESCR

“The States Parties to the present Covenant recognize **the right of everyone to an adequate standard of living** for himself and his family, including adequate **food, clothing and housing, ...**”

Article 12 CESCR

“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental **health**.”



**More than a right, the access to
water is a essential condition for
survival**

Concept

„The human right to water is the right of everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses.“

(UNO Committee on Economic, Social and Cultural Rights, General Comment No. 15)

Criteria for realization of the Human Right to Water

- Availability → Sufficient → personal uses
→ Continuous → domestic uses
- Quality → safe
→ acceptable colour, odour, taste
- Accesibility → Physical accesibility
→ Economic accesibility
→ Non-discrimination
→ Information accesibility

Legal Content Right to Water

● **Freedoms**

- Acces to existing water supplies
- Right to be free from interference, such arbitrary contamination of water supplies

● **Entitlements**

- Right to a system of water supply and management

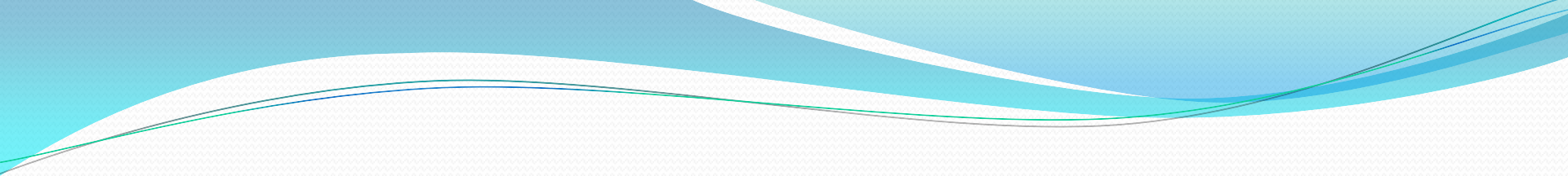
Personal and domestic uses of Water

- Drinking
- Personal sanitation
- Washing of clothes
- Food preparation
- Personal hygiene
- Household hygiene

According to World Health Organization (WHO) it is necessary between 50 and 100 liters per person per day

Human Right to Water

The most important thing is that everyone has the possibility (in any way) to have the amount of safe water required to cover the basic needs.



Given these reflections the water utility is fundamental to safeguard the human right to water and other rights that are affected

Right to Water in Colombia

- No specific norm for the human right to water
- Support by ESCR and collective and environmental rights:
 - **Art. 49:** Colombian Constitution: Health care and environmental sanitation are utilities paid by the State
 - **Art. 79:** Everyone has the right to enjoy a healthy environment
 - **Art. 366:** The general welfare and the improvement of the population quality of life are social purposes of the State. **Fundamental goal of its activity is solving unsatisfied needs of health, education, sanitation and safe water.**

Jurisprudence of the Constitutional Court

- General Comment No. 15 of Committee on ESCR
 - ↳ Part of the Constitutionality Block
(*Bloque de Constitucionalidad*)
Art. 93 Colombian Constitution
 - ↳ **Right to Water is a fundamental human right / constitutional standard**
- Human Right to Water for personal use is a fundamental right. (No for agricultural use)

Art. 93 Colombian Constitution

„International treaties and agreements ratified by the Congress that recognize human rights and that prohibit their limitation in states of emergency have priority **domestically**“

 Status of constitutional law

Conclusions

➤ **The State is responsible for the effectiveness of provision of public services and that these reach all inhabitants of the country (art. 365 Colombian Constitution)**



Duty not properly fulfilled

consequently

Social enterprises → alternative solutions for
the deficient provision of
domiciliary public utilities

→ domiciliary public utilities
providers

→ support of the State

└→ Colombia a SOCIAL STATE OF LAW.